Supreme Court, U.S.
FILED

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1994

LESLIE HAZLETT THACKER,

Petitioner-Defendant,

vs.

THE STATE OF TEXAS,

Respondent-Plaintiff.

Petition for Writ of Certiorari to the Court of Appeals for the Fourteenth District of Texas at Houston and Appendix

Petition for Writ of Certiorari and Appendix

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QUESTIONS PRESENTED

1. Whether the decision of the Court of Appeals for the Fourteenth District of Texas approving the search warrant conflicts with the particularity requirement of the Fourth Amendment of the United States Constitution?
2. Whether the decision of the Court of Appeals for the Fourteenth District of Texas conflicts with the Fourteenth Amendment of the United States Constitution when the illegally seized evidence is eliminated?

PARTIES TO THE PROCEEDINGS BELOW

1. Leslie Hazlett Thacker.

2. Her Counsel:

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3. The State of Texas.

4. Its Counsel:

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REFERENCE TO OPINIONS BELOW

The published opinion of the Court of Appeals for the Fourteenth District of Texas at Houston is reproduced in Appendix A. It is published as Thacker v. State, 889 S.W.2d 380 (Tex. App. —Houston [1st Dist.] 1994, pet. ref.).

JURISDICTION

The Fourteenth Court of Appeals rendered judgment in the case on August 25, 1994. Petitioner Leslie Hazlett Thacker filed a timely Motion for Rehearing on September 9, 1994. The Motion for Rehearing was overruled on September 29, 1994. (App. F, G.)

Thacker filed a timely Petition for Discretionary Review with the Texas Court of Criminal Appeals on November 2, 1994. The Petition was refused on January 11, 1995. The Texas Court of Criminal Appeals denied

Thacker's Motion for Rehearing on February 15, 1995. (App. H.)

The Supreme Court of the United States has jurisdiction to grant this Petition under 28 U.S.C. §1257 to review the decision of the Court of Appeals for the Fourteenth District of Texas at Houston.

CONSTITUTIONAL PROVISIONS

(1) Amendment IV, U.S. Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(2) Amendment XIV, U.S. Constitution:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. Thacker was convicted of purchase of a child. - In 1992, Petitioner Leslie Hazlett Thacker was convicted of the purchase of a child, a violation of §25.11 of the Texas Penal Code, and assessed a ten year prison sentence, probated, and a $10,000 fine. (App. A, B-8 — B-9.) The conviction was affirmed by the intermediate Texas appellate court and the Texas Court of Criminal Appeals refused to review the case. (App. D-H.)

Thacker owned and operated a properly licensed child placement agency. (App. B-3.) Her conviction was based upon support payments made by Thacker to her co-defendant, who was the mother of several children Thacker was attempting to place for adoption. (App. B-3 — B-5.)

2. The conviction was based upon evidence seized under a general search warrant. - A massive amount of material was seized from Thacker's home and office under a general search warrant. (See Return,

State Ex. 1.) The warrant directed the officers to seize:

> Any and all records and instruments constituting evidence of an offense or constituting evidence tending to show that Leslie Hazlett Thacker has committed the offenses of Sale and/or Purchase of Child, Theft, and Tampering with a Government Document, that may be found therein including, but not limited to, all **financial records** for Leslie Thacker individually and as Leslie Thacker Child Placement Agency (to include audits, canceled checks, check registers, ledger sheets, bank statements; accounts receivable and payable and invoices and records of payments or receipts; any record whatsoever reflecting expenditures to biological mothers, foster parents, medical personnel, or billed to adoptive parents); All **case records** (to include all of the agency's files and information on biological mothers, children, adoptive parents and prospective placements; all information required by law or administrative rule to be kept by a child placing agency, all correspondence, diaries etc. and legal documents); all written policies and procedures; all employment files, applications; all materials regarding training of employees, foster parents, etc; all contracts with biological parents, prospective adoptive parents, foster parents, employees or contractors and medical personnel; all phone bills showing long distance calls made or received; and all other records in whatever form constituting evidence of Sale and/or purchase of a child, theft, or tampering with government document.

(State's Ex. 1, Emphasis in original.)

Thacker's conviction was based upon the evidence seized under the warrant or evidence developed from that seizure. (See e.g., State's Ex.s. 8, 9, 11, 13, 36-49, 51-65; App. B-4 — B-5.) Thacker's attempts to suppress the evidence were fruitless. (S.F. II, pp. 25-70.)

3. The constitutional issues were raised below. - At the hearing in the trial court on the motion to suppress, Thacker raised her constitutional challenge to the search warrant under the Fourth Amendment. At

the conclusion of the hearing, her trial counsel told the court:

> But, what I seriously want is that you take into consideration all these—all that occurred before Judge Rains, I think, illustrates what the State is doing in this case and what they were doing, Judge, clearly is, they had a general Warrant, and it's invalid because of that. It was a general and exploratory search without any specific information.
>
> * * *
>
> And that's not what's authorized under either the State or the Federal Constitutions or by the Code of Criminal Procedure.

(S.F. III, pp. 69-70.)

The issue concerning search warrant was presented and argued in the Court of Appeals by Ground of Error No. 1 in Thacker's brief: "The trial court erred in overruling appellant's motion to suppress evidence seized by the State during a search of appellant's business/ residence." (App. Br., pp. 2-5.)

The Court of Appeals rejected the contention citing, inter alia, this Court's decisions in Illinois v. Gates, 462 U.S. 213 (1983); United States v. Ventresca, 380 U.S. 102 (1965); and Stanford v. Texas, 379 U.S. 476 (1965) as authority for its decision. (App. B-7 — B-13.)

The due process challenge to the sufficiency of the evidence was raised in the trial court by motions for instructed verdict:

[Thacker's trial counsel]:

> Let me say this: Renew our motion for the instructed verdict or instructed verdict of not guilty,.
>
> * * *
>
> I further move for an instructed verdict on the constitutional basis that there is a conflict between the Penal Code and the Texas Human Resources Code, which was passed after this portion of the Penal Code.

(S.F. XXVIII, p. 3760.)

The challenge was continued in the appellate courts by Ground of Error Five: "The evidence is insufficient to establish the guilt of Appellant beyond a reasonable doubt to the five counts set forth in the indictment." (App. Br. 15-16.)

The Court of Appeals recognized the constitutional foundation of the challenge, citing Jackson v. Virginia, 443 U.S. 307 (1979), but rejected the contention. (App. B-2.)

REASONS TO GRANT THE WRIT

1. The conviction is based on a void search warrant. - Leslie Hazlett Thacker has lost her business, her professional licenses, and her reputation because the State of Texas invaded her home under a general warrant. There are policy reasons and legal reasons for the Court to grant this petition and correct the errors committed below.

a. A policy statement is needed. - It is apparent from the language used and the cases cited by the Texas Court of Appeals, that the trend toward approval of a general search warrant is growing. (App. B-12 — B-13.) State and Federal courts are making ever increasing use of the rationalization in Spinelli v. United States, 382 F.2d 871 (8th Cir. 1967) rev'd o.g. 393 U.S. 410 (1969) that a general warrant is permissible if "the circumstances of the case make an exact description...a virtual impossibility...." Ibid. See e.g. Ellis v. State, 714 S.W.2d 465, 470-71 (Tex. App.— Houston [1st Dist.] 1986, pet. ref'd.); Hearn v. Internal Revenue Agents, 597 F.Supp. 966, 969-70 (N.D. Tex. 1984).

Through that language, the lower courts are developing a situational approach to the Fourth Amendment. "Impossible" more often means "inconvenient." The Fourth Amendment applies if law enforcement official have enough information; otherwise, the constitutional requirement can be ignored.

The Supreme Court should use this case to reaffirm the clear directive of the Fourth Amendment: The warrant must contain language "particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST., 4th Amend.

b. The warrant is void. - The Fourth Amendment was written to prevent the indiscriminate searches and seizures that occurred under the warrantless or general warrant entries of British authorities. Payton v. New York, 445 U.S. 573, 583-85 (1980). The Amendment "categorically prohibits the issuance of any warrant except one `particularly describing the place to be searched and the persons or things to be seized.'" Maryland v. Garrison, 480 U.S. 78, 84 (1987). That requirement "ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide ranging exploratory searches the Framers intended to prohibit." Ibid.

The Supreme Court's decision in Stanford v. Texas, 379 U.S. 476 (1965) illustrates the errors in this case. There, a Texas warrant authorized the seizure of "books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, and other written instruments concerning the Communist Party of Texas." 379 U.S. 478-79.

Compare that description with the language in the Thacker warrant which authorizes seizure of "any and all records" that show commission of the offense in question including but not limited to "all financial records...all case records...all information required by law or administrative agency to be kept...all correspondence, diaries etc....all written policies and procedures; all employment files...all materials regarding training...all contracts with biological parents...all phone bills...and all other records in whatever form constituting evidence of sale and/or purchase of a child, theft, or tampering with government document." (State Ex. 1.) Please remember: In both cases, literary material was being seized.

In Stanford, this Court spoke clearly and precisely, holding that the warrant did not meet Fourth Amendment requirements of particularity. 379 U.S. 486. The reasons given in Stanford are applicable here.

First, the Court reminded us that the hated British writs that were prohibited gave customs officials the authority to search where they pleased "for goods imported in violation of British tax law" — just as the Thacker writ gives officials the authority to seize what they please, i.e., "all other records constituting evidence" of certain crimes. 379 U.S. 481.

Second, the Court pointed out the additional protection to be given to written materials, because of the interplay of the First, Fourth, and Fifth Amendments: "These three amendments are indeed closely related, safeguarding not only privacy and protection against self incrimination but `conscience and human dignity and freedom of expression as well.'" 379 U.S. 485. In that circumstance, the description of things to be seized "is to be accorded the most scrupulous exactitude...." Ibid.

Under the constitutionally deficient generic description in the Thacker warrant, Texas officials (1) invaded the privacy of her home and business (2) destroyed her Fifth Amendment protections and (3) ignored her First Amendment rights. (Remember that the officials were told to seize "all diaries.")

Third, the Stanford Court held that the exactitude required in the warrant should leave nothing "to the discretion of the officer." 379 U.S. 485-86.

Under the Thacker warrant, the officers were given unrestricted discretion to seize "all financial records," "all case records," and "all other records in whatever form" that might be evidence of various crimes. That is precisely the authority assumed by the petty British officials who were searching for tax law violations. That kind of search was condemned by the founding fathers through the Fourth Amendment and condemned in Stanford. It should also be condemned here.

Also illustrative of the invalidity of the Thacker warrant is United States v. Cardwell, 680 F.2d 75 (9th Cir. 1982). In that case, the warrant, in language almost identical to that used in the Thacker warrant, directed seizure of "books and records, including but not limited to canceled and duplicate checks, check stubs, journals, ledgers, weekly summaries, driver trip envelopes, and daily schedules" of various corporations. 680 F.2d at 76. Pointing to the lack of limitation in the warrant and citing many analogous federal decisions, the Court of Appeals held that the warrant did not meet the particularity requirement of the Fourth Amendment. 680 F.2d at 77.

The lesson from history and from the cited cases is clear: officers cannot be given unlimited discretion to seize everything that they, in their discretion, believe to be evidence of a crime. The officers who executed the Thacker warrant had that kind of discretion and the warrant is constitutionally invalid.

2. There is no evidence to support the conviction. - In Jackson v. Virginia, 443 U.S. 307 (1979), this Court iterated the due process requirement that every element of a crime be established beyond a reasonable doubt. 443 U.S. at 314-17. In this case, the Court of Appeals affirmed the conviction on evidence seized under a void warrant. (App. B-4 — B-5.) When that evidence is eliminated, there is not sufficient evidence to support the conviction. Consequently, judgment should be rendered for Thacker.

Alternatively, if there is independent and untainted evidence of guilt, the trial was permeated by the illegally seized evidence and the conviction must be reversed.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Supreme Court to grant this petition and accord Petitioner all relief to which she is entitled.

Respectfully submitted,

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